

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER:
Fuel Tax 00-0343
For Years 1992, 1993, 1994, 1995, AND 1996

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ISSUES

I. Fuel Tax – Estoppel

Authority: IC § 6-6-1.1-103; IC § 6-6-1.1-201; *Crooke v. Lugar*, 354 N.E. 2d 755 (Ind. Appeal 1976)

Taxpayer argues state's issuance of an improper license prohibits the assessment of tax against the taxpayer.

STATEMENT OF FACTS

Taxpayer operated a marina located on a lake within Indiana for the tax years in question. As part of the operations of the marina, taxpayer applied for a permit to sell marine fuel and was improperly issued a Marine Fuel Dealer's Permit for fuel sales by a marina located on a body of water not within Indiana, which exempted the taxpayer from the payment of fuel tax on the purchase of fuel. An investigation by the state established the liability for the years in question and an assessment, which is the subject of this protest, was made.

I. Fuel Tax – Estoppel

DISCUSSION

Taxpayer's argument is based on estoppel against the state. Indiana law requires the taxpayer to show five elements for estoppel:

- 1) A representation or concealment of material facts; 2) The representation must have been made with knowledge of the facts; 3) The party to whom it was made must have been ignorant of the matter; 4) It must have been

made with the intention that the other party should act upon it; 5) The other party must have been induced to act upon it.

Crooke v. Lugar, 354 N.E. 2d 755 at 765 (Ind. Appeal 1976)

The material facts at issue are two Indiana statutes -IC § 6-6-1.1-201, that established a fuel tax on the fuel purchases, and IC § 6-6-1.1-103(k), that granted an exemption for marina sales by marinas located on bodies of water outside of Indiana- for the tax years in question. These statutes were published and promulgated prior to and throughout the time at issue; consequently, the first three elements of the estoppel test are not met. Additionally; taxpayer made no showing of any attempt by the department to intentionally misled taxpayer, nor is there any showing that the department benefited by erroneously issuing an exemption from state taxes, thus the fourth element of estoppel is not met as well.

FINDINGS

Taxpayer protest denied.

JM/BK/MR 002212